

OCT 06 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: :
Suyker et al. :
 : Group Art Unit: 3743
Application No.: 09/708,617 :
 : Examiner: Kathryn Odland
Filing Date: Nov. 9, 2000 :
 :
 : Attorney Docket No.:
For: Permanently Deformable Connector for : DVME-1005US
Mechanically Connecting Hollow Structures, :

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REQUEST TO WITHDRAW THE FINALITY OF THE FINAL REJECTION AND TO
CORRECT THE CLAIMS WITHDRAWN FROM CONSIDERATION**

Sir:

In response to the Final Rejection dated September 9, 2004, the applicant hereby requests that the finality of the Final Rejection be withdrawn and that the Examiner issue a new non-final Office Action.

In the Final Rejection dated September 9, 2004, the Examiner has raised only new grounds of rejection which were not previously raised in the present application. The Examiner has taken the position that the new grounds of rejection were necessitated by applicant's amendment and, on this basis, has made the Office Action of September 9, 2004, a Final Rejection. However, the applicant's amendments did not necessitate the new grounds of rejection and thus the finality of the Office Action should be withdrawn.

More specifically, the applicant amended claim 1 to require that the expansion of the annular member be via plastic deformation. Original claim 1 covered expansion by any means, including by plastic deformation.

CERTIFICATE OF FACSIMILE UNDER 37 C.F.R. §1.8

I certify that this document, along with any document referred to as being attached, is being sent via facsimile on October 6, 2004, under 37 C.F.R. §1.8 to the United States Patent and Trademark Office at facsimile no. 1-703-872-9306.

EDNA SCHMITTINGER
Name of person signing document

Edna Schmittinger
Signature of person signing document

The Examiner could have raised all of the rejections made in the present Final Rejection in the previous Office Action since original claim 1 included all of the subject matter of amended claim 1. The Examiner, however, elected not to raise these rejections until the second Office Action, despite the fact that such a rejection could have been raised in the first Office Action.

The point is that the present rejections could and should have been raised in the first Office Action, but the Examiner chose not to raise them at that time. The applicant's amendment did not necessitate the new grounds of rejection since these grounds of rejection could all have been validly raised in the first Office Action on the basis of original claim 1 even before the applicant's amendment was made.

Thus, it is unfair to the applicant that the Examiner has raised a completely new ground of rejection for the first time in the present Final Rejection that could and should have been raised in the first Office Action, since the applicant is being deprived of its opportunity to fully respond to this rejection as a result of the Office Action being deemed a Final Rejection by the Examiner.

Accordingly, for these reasons, applicant requests that the Finality of the Final Rejection dated September 9, 2004, be withdrawn in order to provide the applicant with an opportunity to fully respond to the new rejections raised by the Examiner for the first time therein.

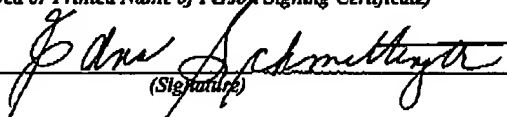
Favorable consideration and issuance of a notice of allowance are requested.

Respectfully submitted,

Date: 10/6/2004


Kevin J. Dunleavy
Registration No. 32,024

KNOBLE YOSHIDA & DUNLEAVY
Eight Penn Center
Suite 1350
1628 John F. Kennedy Blvd.
Philadelphia, PA 19103
Customer No. 21302
Telephone: (215) 599-0600
Facsimile: (215) 599-0601
e-mail: kjdunleavy@patentwise.com

CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 CFR 1.8)			Docket No. DVME-1005US	
Applicant(s) Suyker et al.				
Application No 09/708,617	Filing Date November 9, 2000	Examiner Kathryn Odland	Group Art Unit 3743	
Invention. PERMANENTLY DEFORMABLE CONNECTOR FOR MECHANICALLY CONNECTING HOLLOW STRUCTURES				
<p>I hereby certify that this <u>Request To Withdraw The Finality Of the Final Rejection And To Correct The Claims...</u> (Identify type of correspondence)</p> <p>is being facsimile transmitted to the United States Patent and Trademark Office (Fax. No <u>703-872-9306</u>)</p> <p>on <u>October 6, 2004</u> (Date)</p> <p style="text-align: right;"><u>Edna Schmittinger</u> (Typed or Printed Name of Person Signing Certificate)</p> <p style="text-align: right;"><u></u> (Signature)</p> <p style="text-align: center;">Note: Each paper must have its own certificate of mailing.</p>				

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Knoble Yoshida & Dunleavy, LLC
INTELLECTUAL PROPERTY ATTORNEYS

EIGHT PENN CENTER, SUITE 1350
1628 JOHN F KENNEDY BOULEVARD
PHILADELPHIA, PENNSYLVANIA 19103

(215)599-0600
FAX (215) 599-0601

FACSIMILE COVER SHEET

DATE: October 6, 2004

Please deliver this and the following pages to:

NAME: Examiner Kathryn Odland

COMPANY/FIRM: United States Patent and Trademark Office

TELECOPIER NO.: 1-703-872-9306

CLIENT/MATTER NO.: DVME-1005US

SENDER'S NAME: Kevin J. Dunleavy

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